The company claimed that their operator was a skillful and careful one. Then his negligence in this instance was the more apparent and inexcusable. If the handwriting was so bad he could not read it correctly, he should not have undertaken to transmit it; but the business of transmission assumed, it was very plainly his duty to send what was written. It was no affair of his that the message would have been insensible. Messages are often sent along the wires that are unintelligible to the operator. When he presumed to translate the writing and to add letters which confessedly were not in it, he made the company responsible to Dryburg, for the damages that resulted from his wrong doing.

We do not conceive it necessary to go any farther in the discussion of this case. There are several errors assigned to which we have not specially alluded, but we see nothing in them to require a reversal of the judgment. Judgment affirmed.

In the Supreme Court of Texas—Austin Term, 1860.

THOMPSON ET AL., APPELLANTS *vs.* CRAGG ET AL., APPELLEES.
CRAGG ET AL., APPELLANTS *vs.* SMALLEY ET AL., APPELLEES.[1]

1. Under the Spanish jurisprudence and the principles of the laws of the Republic and State of Texas, the interests of the husband and the wife in the community property are severed by the death of either spouse, and the interest of the deceased partner vests at once in his or her heirs, subject only to the community debts.
2. Where the husband, (in Texas) after the death of his wife, (leaving children surviving) contracted to sell the community property and executed a bond for

[1] DIGEST OF THE SUBJECTS DISCUSSED:—1. Spanish law as to power of surviving spouse to dispose of the community property. 2. Three years Statute of Limitation of Texas. 3. Difference, under three years statute of Texas, between title and color of title discussed. 4. Partition—good faith—improvements. 5. Coverture and Limitation. 6. Panand *vs.* Jones, 1 Cal. R. 448, reviewed at length and held to be erroneous.

We publish this case at the request of some esteemed correspondents in Texas, who assure us that the questions discussed are of great magnitude and importance in that State and in California. The opinion of the learned judge is certainly marked by ability, and will not fail to command the attention of the profession in those sections of the union to which it is peculiarly applicable.—*Eds. Am. Law Reg.*

title, a decree, after his death, in a suit for specific performance of the bond brought against such children, as "the heirs of their deceased father" is only binding on them in that capacity, and will not divest their interest in such community property, as the heirs of their deceased mother.

3. Nor will a commissioner's deed, made in pursuance of such decree, vesting in the purchaser all the rights of the plaintiffs "as heirs of their deceased father," be a sufficient title or color of title to support the plea of the statute of limitations of the State of Texas of three years, and defeat their right to a recovery in a suit brought by them as heirs of their deceased mother.
4. In suits for partition in Texas, where there is no dispute as to the title, the equities between the parties, growing out of improvements and ameliorations, can be adjusted by the court, with the aid of the commissioners appointed for that purpose.
5. But in cases like the present, where questions of title and good faith are involved, it is the right of the defendant, under our statute, to have the question of good faith submitted to the jury, and it is their further right to have the value of their permanent and valuable improvements assessed by a jury, and secured to them in the ultimate partition.
6. The proper and most convenient mode to do this, is to submit to the jury issues respecting the value of the different tracts claimed by the defendants, respectively, with and without improvements.
7. The court below properly excluded from the jury, evidence to the effect that the surviving father was a poor man, and that the community property was sold for the support of the family. To uphold sales of this character on such grounds, would withdraw the most important rights from the control of judicial tribunals, and leave them to the capricious inclinations of individuals.
8. Where a female under the age of twenty-one years, is married in accordance with the laws of this state, (quoted in the opinion,) she is deemed of full age, and the statute of limitations commences to run against her from the time of her marriage.
9. The case of White *vs.* Latimer, 12 Tex. 61, in this latter point, reviewed and affirmed.
10. After the death of the husband or wife, the surviving spouse, under the Spanish law, had no right to sell the whole of the community property, but one-half thereof descends presently to the heirs, subject only to the community debts.
11. The case of Pannand *vs.* Jones, 1 California Reports, p. 448, maintaining the contrary doctrine, fully discussed and considered, in connection with the Spanish law on the subject, and held to be in direct conflict with that law.

Error from Williamson county.

BELL, J.—I will state, as preliminary matter, a few of the leading facts of this case, that the opinion may be the more easily understood.

Prior A. Holder emigrated to Texas in the year 1833. He was a married man, and received a grant of a league and labor of land, as a colonist.

The league of land was located on Brushy Creek by Thomas Kinney, who received one-half of it for locating, surveying, &c. Julia Holder, the wife of Prior A. Holder, died in December, 1836, leaving two children, William Holder, who was born in October, 1832, and Martha Jane, now Mrs. Cragg, who was born in December, 1835.

William Holder, the son of Prior A. and Julia Holder, married Eliza Vandever, and died in April, 1856, leaving the said Eliza a widow without children. Martha Jane, the daughter of Prior A. and Julia Holder, married Richard Cragg, on the 31st day of August, 1852.

On the 24th of April, Prior A. Holder sold the remaining half of his head-right league of land to W. D. Thompson & Co., and executed a bond for title.

Prior A. Holder died in November, 1837, leaving no children but William and Martha Jane.

In March, 1847, W. D. Thompson and O. B. Smith, instituted suit in the District Court for Bastrop County, on the bond executed by Prior A. Holder to W. D. Thompson & Co. This suit was against Thomas H. Mays, who was the administrator of Prior A. Holder's estate, and against the minor children of Prior A. Holder, namely: William and Martha Jane. In this suit there was personal service on the minors. Thomas H. Mays was appointed their guardian ad litem. On the trial Mays answered, confessing the allegation of the petition of Thompson & Smith, and the court rendered judgment, appointing commissioners to partition the head-right league of Prior A. Holder, and to set apart to said Thompson & Smith one-half of it; and also appointing a special commissioner to execute to the said Thompson & Smith a deed to the half so set apart to them by the commissioners, which deed should convey to the said Thompson & Smith "all the interest that the heirs of the said Prior A. Holder may have had in and to the lands so set apart."

The commissioners appointed by the court divided the land and made their report on the 22d day of October, 1847. Preston Cowlee,

the special commissioner appointed for the purpose, executed a deed to Thompson & Smith, in conformity with the previous decree of the District Court for Bastrop county, at Bastrop. This suit was instituted on the 11th day of February, 1857, by Martha Jane Cragg, and her husband Richard Cragg, and Eliza Holder, the widow of William Holder, against Freeman Smalley, and many other defendants. Thompson was made a party by amendment filed 17th of March, 1858.

Martha Jane Cragg sues for her interest in the land as heir of her mother, Julia Holder, and as entitled to a portion of the interest of her deceased brother, William Holder, which he inherited from his mother Julia. Eliza Holder sues for the interest to which she is entitled as the surviving wife of William Holder. During the pendency of the suit, Eliza Holder intermarried with John R. Hubbard, who joined her in the suit as a party plaintiff. The original petition was in the form of an action of trespass to try title, the plaintiffs claiming the whole of the half league of land. The defendants pleaded the statute of limitations in all of its various provisions. They also pleaded title in themselves for nineteen years, the staleness of the demand of the plaintiffs, and valuable improvements made in good faith. By the amended petition, filed March 17th, 1858, the plaintiffs set out the facts upon which their claim of title rested, limited their claim to half of the half of the half league, and asked for partition between themselves and the defendants in possession.

The defendants all claim under the sale by Prior A. Holder to Thompson & Smith, the decree of the District Court of Bastrop county, and the deed of the commisioner, Preston Cowlee, made in pursuance of the decree. On the trial of the cause in the court below, the court treated the suit as one for partition only; arrested the defendants in the introduction of evidence of the value of their improvements, and excluded all evidence in relation to the value of the improvements from the consideration of the jury.

The instructions given by the court to the jury were, in some respects, contradictory, owing doubtless to the fact, that many instructions were asked by the parties which the court did not take time sufficiently to scrutinize.

In what appears to be the general charge given by the judge, of his own motion, the jury were told, that the decree of the District Court of Bastrop county might be looked to by them as one of the links of a title or color of title, as those terms are used in the three years statute of limitations.

He instructed them particularly in reference to the statute of limitations of three years and of five years.

The judge also gave the sixth instruction asked by the plaintiffs, (in connection with others asked by them,) which was to the effect that under the title presented by the defendants, it would be necessary for them to show five years uninterrupted and peaceable possession, using, cultivating, and paying taxes on the land, and that if they failed to show all those circumstances, the plaintiffs were entitled to recover the land.

The plaintiffs then asked the court to instruct the jury that the statute of limitation of three years was not applicable to the title offered in evidence by the defendants, except as to the interest of Prior A. Holder in the land. This charge was refused by the court. The court then instructed the jury, at the request of the defendants Freeman Smalley and those claiming under him, that if they found from the testimony, that Freeman Smalley was in possession under title or color of title for three years from the time the cause of action accrued to the plaintiffs before the 11th of February, 1857, they would find for said Smalley and those claiming under him, to the extent of the boundaries in the deed from Smith & Thompson to Freeman Smalley. The court also instructed the jury, at the request of said Smalley, and those claiming under him, that the decree of the District Court of Bastrop county, and the deed of the commissioner, made in pursuance of said decree, constituted color of title as contemplated in the three years statute of limitation. At the request of the other defendants, the court instructed the jury that the decree of the District Court for Bastrop county, and the conveyances under it, were good title and color of title, to support the plea of the statute of limitations of three years as to all of the defendants who had possession under said decree and conveyances before the commencement of the suit; and that the statute of limitations began to run as to Martha Jane Cragg, from the day

of her marriage, and against William Holder, from the time of his becoming twenty-one years of age; that the statute did not cease to run until the commencement of the suit, and so far as the defendants were in possession, three years from the date of the marriage of Martha Jane Cragg, and from the time William Holder became twenty-one years of age, they were protected by the statute of limitation of three years.

There were other instructions given and refused, not necessary to be particularly noticed here. Upon a view of all the instructions given and refused by the court, it is obvious that the court below was of opinion that the decree of the District Court of Bastrop county, and the deed made in pursuance of it, only affected the rights of the children of Prior A. Holder as *his* heirs, and that they did not affect their rights as heirs of their mother Julia Holder. But the court was at the same time of opinion, that the decree and commissioner's deed constituted such color of title as would support a possession of three years under the appropriate plea.

As our opinion will lead to a reversal of the judgment of the court below, I shall proceed to state as succinctly as possible, and without any extended discussion, wherein we believe the court below to have erred, and wherein our opinion coincides with the views which it is plain were entertained by that court.

In the first place we are of opinion, that the decree of the District Court of Bastrop county only concluded the rights of the children of Prior A. Holder in the half league of land, so far as they were entitled through him, and that it did not affect the interest which they had in the land as heirs of their deceased mother, Julia Holder.

It is contended by the counsel for those parties who were defendants in the court below, that the children of Julia Holder ought to be, in all respects, concluded by the decree of the District Court of Bastrop county, because they were parties to it, and because the question of Prior A. Holder's right to sell the whole of the land, was a question which might have been adjudicated in the Bastrop suit. The object of the suit in the District Court of Bastrop county was simply to have the bond of Prior A. Holder carried

into effect; and nothing more can be claimed for the decree than was asked in the suit. The minor children of Prior A. Holder were parties to the suit as the heirs of Prior A. Holder, and in that capacity only.

Let us suppose that Prior A. Holder had not been dead, and that a sui thad been brought against him on the bond for specific performance. It will not be pretended, that a decree vesting all his right, title and interest in the land in Thompson & Smith, would have affected the interest of his children as heirs of their mother; and yet, in the case supposed, the question of Prior A. Holder's right to sell the whole land, would have been as much involved, as it could possibly have been in the suit, the effects of which we are now considering. Nor can the proposition be maintained that the minors were in all respects concluded by the decree, because they were parties to it.

To state this proposition in another form, would be to say, that the heirs of A being also the heirs of B, are affected in their rights as the heirs of A by a decree against them as the heirs of B, when their rights as the heirs of A were not involved in any way in the suit in which the decree was rendered.

Let it be borne in mind in the case before us, that the legal status of the minors, William and Martha Jane, as the heirs of their father, was something entirely distinct from their legal status as the heirs of their mother, just as the estate of their mother in the head-right league of land, was after her death, a legal status entirely distinct from the estate of their father, in the same league of land.

I will put a case, which, I think, will set the matter in a clear light. Let us suppose that when Prior A. Holder and Julia Holder intermarried, each of them had two children born of former marriages. With these children let us suppose them to have emigrated to Texas, and acquired a head-right league of land. Let us suppose the mother to die, leaving her two children by a former marriage, having borne no children to her last husband. Let us suppose Holder, after his wife's death, to sell the league of land and give bond for title, and afterwards to die, leaving his two children the fruit of his first marriage. Let us suppose that suit is instituted

against his adminstrator, that his two children are made parties, that a specific performance of the bond is asked, and a decree rendered, vesting in the obligee in the bond, all the right, title and interest of Holder and his heirs in the league of land. Would the heirs of Mrs. Holder be in any way affected by all this? Certainly not. No more can the heirs of Mrs. Holder be affected by this Bastrop decree, for the case last stated and the case now before us are the same.

We are of opinion that the decree of the District Court of Bastrop county, and the commissioner's deed, and the subsequent conveyances to the defendants, which were in evidence on the trial, do not constitute such title or color of title, as will support the plea of the statute of limitation of three years. These muniments do not constitute title, because, as has already been said, the Bastrop decree did not touch the interest of the heirs of Julia Holder as such in the land. Nor can there be color of title, as defined by the statute, where there is a complete hiatus in the chain. Color of title differs from title only in externals. The substance of both is the same. Were this not so, if color of title were something intrinsically and substantially less or weaker than title, then the wisdom of the legislature could not be vindicated, in applying the same period of limitation to a possession supported by the one, as is applied to a possession supported by the other.

The shortest period of limitation of which the defendants could avail themselves in the support of the title exhibited in evidence, is five years. We are of opinion that the defendants exhibited such muniments of title as secured to them the right to have the question of the good faith of their possession, and the value of their improvements, submitted to the jury.

The suit could not be properly treated as a suit for partition only. The main question between the parties was the question of title. In suits for partition, where there is no controversy about the title, the equities between the parties, growing out of improvements and ameliorations, may be settled by the court with the aid of commissioners appointed for that purpose. But in a case like the present, where the question of good faith is involved, it is the right of the

defendants to have that question determined. And if their possession be found to be in good faith, then, it is their further right to have the value of their permanent and valuable improvements ascertained by the jury, and secured to them in the ultimate partition. These questions, concurring the value of improvements in a case like the present, can be most conveniently disposed of by submitting issues to the jury respecting the value of the different tracts claimed by the defendants respectively, with and without the improvements. We are of opinion that the court did not err in rejecting the evidence offered, that Prior A. Holder was a poor man, unable to work for his children; that the sale of the land was necessary for the support of his children, &c. This court has never gone so far as to decide that the surviving father or mother could sell that portion of the community property which vested in the heirs of the deceased partner, for the support of the family; and to uphold sales upon such grounds would be to withdraw the most important rights from the control of those tribunals authorized by law to guard and protect them, and to commit them to the capricious inclinations of individuals.

The record discloses the fact that Martha Jane Holder, now Mrs. Cragg, married in 1852, being about seventeen years of age at the time of her marriage. It is argued by her counsel that the statute of limitation did not commence to run against her until she attained the age of twenty-one years, and we are asked to reconsider the decision of this court upon the point in the case of *White* vs. *Latimer*, 12 Tex. 61. It is contended that our statute, (Art. 2420 of Hart. Digest,) which provides that "every female under the age of twenty-one years, who shall marry in accordance with the laws of this State, shall from the time of and after such marriage be deemed to be of full age, and shall have all the rights and privileges to which she would have been entitled had she been at the time of marriage of full age," was intended to endow females who should marry under the age of twenty-one years, with all the capacities, rights and privileges of persons of full age, but not to deprive them of any advantages they might claim by reason of nonage. The statute will not admit of this construction. The language used, "shall be

deemed to be of full age," we think, must be taken to mean that the person spoken of shall be deemed to be of full age for all purposes.

The position was assumed in the court below, and has also been taken in this court, that under the Spanish law in force at the time when Prior A. Holder sold the land in controversy to Thompson & Smith, he had the right to sell the whole of the land after the death of his wife. And we are referred to the case of *Panand* vs. *Jones*, 1 California Rep. 488, where the proposition is distinctly and emphatically asserted, "that by the law of Spain, one half of the community property did not vest in the children of the marriage, upon the dissolution of the marriage by the death of one of the spouses; but that the common property, not one half, but the whole, was a security for the payment of debts contracted for the common benefit, and also by the husband after the death of the wife; and that neither the heirs of the wife nor of the husband have any interest, except in that portion which remains after the payment of such debts." I think it proper to notice the position assumed, and the case of *Panand* vs. *Jones;* not because the question involved is an open one, but because the sources of the learning, by which the soundness of the propositions asserted in the case referred to must be tested are not accessible to every member of the profession, and because upon a question so fundamental in the Spanish jurisprudence in relation to community property, we are not willing that there should be any room for doubt as to the correctness of the former decision of this court.

The judge who delivered the opinion in the case of *Panand* v. *Jones*, was misled by detached passages of commentations, which doubtless came under his consideration disconnected from the great body of the Spanish law on the subject with which the passages referred to are not at variance. He also misunderstood the scope and meaning of the 14th law of Toro.

That law is calculated to mislead when considered by itself. It is expressed in the following terms:

"Mandamos yue el marido y la munger, suello el matrimonio dun que caren segunda o tercera viz: o mas, pueden disponer libremente de los bienes multiplicados durande el primero, o segunda, o

tercero matrimonio amuque haya ha bido hijos de los tales matrimonio o alzunas de ellos, durande los cuales matrimonios los dictos bienes se multiplicaron: Como de los otros sus bienes proprios yue no orisen seido de guarrancia, sui tel obligados a reservar a los tales hijos, propriedad in usufructo de los tales bienes." Which may be translated thus: "We command, that the husband and the wife, after the dissolution of the marriage, although they may marry a second or a third time or more, may dispose freely of the property accumulated during the first marriage, or second or third marriage, although there may be children of such marriages or some of them, during which marriages the said property was accumulated, as of their other individual property which is not ganancial, without being under any obligations to reserve to such children, either such property itself or the usufruct of it."

This 14th law of Toro means only, that upon the dissolution of the marriage, the surviving husband or wife may dispose of *their portion of their ganancial property;* but it does not mean that the surviving husband or wife could freely dispose of *the whole* of the ganancial property, and it was never so understood by any commentator or by any judicial tribunal of the country, in which it was promulgated. This 14th law of Toro was declared with particular reference to other principles and provisions of the Spanish law, which are said by some of the Spanish commentators to have been inherited, and which obviously were inherited by the Spaniards from the Romans.

There were certain classes and kinds of property which were said to be acquired by the husband and wife by lucrative title (por titulo lucrativo) and in respect to which it was provided, that in the event of the dissolution of the marriage, during which such property was acquired, and the entrance of the survivor of the first marriage into a second marriage, such survivor was under obligation to reserve such property, so acquired by lucrative title during the first marriage, to the children of the first marriage. See leg. 14, titulo 2, libro 4 of the Fuero Tuzgo. See also leg. 13 of the same title of the same book of the same Fuero.

The 14th law of the 2d title of the fourth book of the Fuero

Tuz. 90, provided that the mother should inherit jointly with the children and in equal parts the property of her husband, but in the form of usufruct only, and that in case she contracted a second marriage, she should lose the usufruct. The 13th law of the Fuero Tuzgo, provided, that when one of the parents died, the survivor acquired the estate from the children in respect to the usufruct only. Leg. 1, tit. 2, libro 4 del Fuero Real, provided, that the mother is obliged to reserve for his children three-fourths (las tres partres) of the arras which she received from her husband, and if she had children of two marriages, the children of each marriage should inherit the arras received from their respective fathers. See also leg. 23, tit. 11, Partida 4, and leg. 26, tit. 13, Partida 5. See also the 19th, 20th, 21st, 22d, 24th and 25th paragraphs of the Commentary of Hannay on the 15th law of Toro.

The arras of the wife, or the property given to the woman by the man, in consideration of the marriage—the donations, *propter nuptias*, or that property which either gave to the other freely and without condition; the dower which the wife brought to the husband, and inheritances under certain circumstances by either the husband or wife from the children of the marriage, constitute the property acquired by lucrative title, which was to be reserved for the children of the marriage by and during which it was acquired.

The 15th law of Toro provided, that in all cases in which women marrying a second time, were under obligation to reserve to the children of the first marriage the property received from the first husband or inherited from the children of the first marriage, in like cases, men who shall marry a second or third time shall be under obligation to reserve the property acquired by the first or second marriage to the children of that marriage; and that the same rules in respect to women who married a second time, should apply to men who married a second or third time.

The Commentary of Llamos on the 15th law of Toro, in which he quotes the opinions and expressions of many other commentators, show in the clearest manner possible, the reasons and principles in which the 14th law of Toro had its origin, and the substance of the whole is, that inasmuch as the community or ganancial pro-

perty is acquired by onerous title, as distinguished from lucrative title, the surviving husband or wife shall have the power freely to dispose of their portion of such ganancial property without being under any obligation to reserve it for the children of the marriage during which it was acquired, in the same manner that they were required to reserve property acquired by lucrative title to the children of the marriage *by which* it was acquired.

If the 11th law of Toro had not been promulgated with particular reference to the other laws which required a surviving husband or wife contracting a second marriage to reserve to the children of the first marriage, the property acquired by such marriage, by lucrative title, then it would have made no mention of second or third marriages.

If the object of the law was to endow the surviving husband or wife with power to sell the whole of the ganancial property acquired during the marriage, then nothing need have been said about second and third marriages.

The 16th law of Toro provides, that where the husband shall bestow or bequeath to his wife anything at the time of his death, or in his testament, the thing so bequeathed shall not be charged to the wife in the part which she is to have of the ganancial property. In their commentaries upon this law, the Spanish authors discuss, at great length, the nature and extent of the wife's title or property in the half of the acquisitions made during the marriage.

Much criticism is lavished upon the words used in leg. 1, tit. 3, lib. 3 del Fuero Real, where it is said: "To da cosa yue del marido y muyer ganaren o compraren, estando de consuno hayan to ambos por medio."

Some of the commentators contend that the verb hayan, is used in the sense of vesting actual property or dominion in the thing spoken of. Others deny that the word has so large a signification, but all agree that upon the dissolution of the marriage by the death of one of the spouses, the ganancial property vests absolutely, one half in the survivor and the other half in the heirs of the deceased partner.

See Commentaries of Llamos Gomez on the 16th law of Toro.

Sec. 13 of the 5th title of Febrero Reformado treats of the rights and liabilities appertaining to the conjugal partnership. In paragraph 410, it is said, "The power of alienation which the laws concede to the husband only, continues during the marriage only. The husband is prohibited from disposing, by testament, of that portion of the ganancial property belonging to the wife."

The 412th paragraph of the same section, speaking of the liabilities of the conjugal partnership, says, that they may be divided into two classes. First, those charges which arise during the existence of the partnership; and secondly, those relating to the obligations which ought to be discharged out of the effects of the partnership after its dissolution.

In the first class are enumerated the necessary expenses of maintaining the family and household, the dower given to the daughters and the donations propter nuptias made to the sons, &c. It is then said, that after the dissolution of the partnership, the common effects ought to be chargeable, in the opinion of some, with dower and donations of the same kind made by one of the spouses after the death of the other; but this proposition is denied, and the reason for denying its soundness is, that the partnership being dissolved by the death of one of the spouses, all its consequences cease.

And in conclusion, it is said, "The only charge to which the ganancial property is subject, after the death of one of the spouses, is the payment of the debts contracted during the matrimony by either of them, provided they originated in the business of the partnership itself, and not in the private business of one of the partners.

In paragraph 406 of the same work, section 12, the ganancial property, or what is ganancial property, is particularly defined. And afterwards, in the same work, in treating of the division of ganancial property between the surviving spouse and the heirs of the deceased, it is said in paragraph 2396, section 1, title 33, "According to this law," referring to leg. 1, tit. 4, lib. 10, of the Novisima Recop., "according to this law, all the property, of which we spoke in paragraph 406, which is ganancial, ought to be divided between the survivor and the heirs of the deceased spouse."

In the Intitutionu del Derocho Civil de Castilla, by Asso and Mannel, in treating of the ganancial property and the rights of the spouses in respect to it, those learned authors say, on page lxii, chap. 5, title vii, libr. Primero, "Upon the dissolution of the marriage, the survivor may dispose of that part of the ganancial property which belongs to him or her, without being obliged to reserve it for the children." And what is very conclusive upon the question under discussion, is, that the authority cited by Asso and Mannel, for the proposition just quoted from them, is leg. 6, tit. 9, lib. 5, of the Recopilacion, which is also the 14th law of Toro, upon which the doctrine asserted in the case of *Panand* v. *Jones*, 1 Cal. Report, 488, was mainly rested.

The Supreme Court of Louisiana was long distinguished for the eminent ability of its judges, who made the most profound investigations into the whole bearing of the Spanish law, and who explored thoroughly every kindred system of jurisprudence, aided, too, by counsel whose fame as civilians extended throughout the whole country.

The wonder would indeed be great, if that court, administering the Spanish law for very nearly half a century, shall have remained all the while ignorant of one of its most important provisions respecting the partnership which exists between husband and wife as to their common property. That court has time and again decided the question under consideration, and the principle has always been asserted and never questioned, that the community of acquests and gain ceases to exist at the moment of the death of one of the partners, with all the legal effects resulting from it; that each party to the community is seized of one undivided half of the property composing the mass, and that the survivor cannot validly alienate the share not belonging to him. In the case of *Bromord* vs. *Bernard et al.* 7 Louisiana Reports, 216, the court said: "That a community of acquests and gains, as such, continues after the death of one of the partners, with all the legal effects resulting from such a relation, with authority in the husband, if he should survive, to be still regarded as the head of the community, with power to bind the common property by new contracts, and to alienate

it without restraint, is a proposition so repugnant to all our notions of a community, and so subversive of all its principles, that it cannot be for a moment admitted.

But I need not pursue this subject further. If the question was one about which there could be any doubt, or if the former decisions of this court needed any vindication, it would be matter of regret that the late Chief Justice is not here to perform a service, to which his abilities and learning are so fully adequate. My only object has been to express our confidence in the correctness of the former decision of the court, and to make such references to sources of information as will enable those who may desire to investigate these questions for themselves, to do so. I am quite conscious of my want of ability and learning in the Spanish law to present the subject in a full and clear light.

The judgment of the court is reversed, and the cause remanded for further proceedings in conformity with this opinion.

NOTICES OF NEW BOOKS.

DECISIONS OF THE INTERIOR DEPARTMENT IN PUBLIC LAND CASES, AND LAND LAWS PASSED BY THE CONGRESS OF THE UNITED STATES; Together with the Regulations of the General Land Office. By W. W. LESTER, of the Interior Department, Washington, D. C. Philadelphia: H. P. & R. H. Small, Law Booksellers and Publishers, No. 21 S. Sixth Street. 1860. pp. 772.

This volume is one certainly much needed by all buyers and sellers of land in the newer states. It is divided into five parts: first, a selection of the laws of Congress in relation to public lands; second, the decisions of the Secretary of the Interior; third, the opinions of the Attorneys-general in full, upon questions under the land laws; fourth, the instructions of the Commissioner to the registers and receivers; fifth, notes of reference to the decisions of the Supreme Court on the land laws. This division seems natural and convenient, and the reader will here find what is not elsewhere collected in any form that is accessible to the profession, or laymen generally. We have been informed by gentlemen much more competent to pass judgment upon the volume than ourselves, that it is a manual of great practical value for all who have rights in the Public Domain.